IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5538 of 2007()

[O.R.NO.41/05 OF EXCISE RANGE, THRIRUVANANTHAPURAM]

PETITIONER/2ND ACCUSED

KUNJUMON S/O TITUS,
BIRA 248, BARTON HILL, KUNUKUZHY, VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5538 of 2007

Dated this the 17th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Summons has been issued after taking cognizance. The petitioner has not been arrested so far. He apprehends that when he appears and applies for bail, his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 438 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail. The petitioner further submits that there is no worthwhile allegations also against the petitioner.

2. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and seek regular bail. I find absolutely no reason to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. I have no reason to assume that the learned Magistrate would not consider the application

for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

3. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

4. Needless to say, the petitioner's application for regular bail will have to be considered by the learned Magistrate on merits under Section 437 Cr.P.C in the light of the dictum in Sukumari v. State of Kerala [2001(1)KLT 22]).

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007